

Assembly Bill No. 880

CHAPTER 934

An act to amend Section 368 of the Penal Code, relating to elder abuse.

[Approved by Governor September 28, 1998. Filed
with Secretary of State September 28, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 880, Hertzberg. Elder abuse.

Under existing law, any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement with respect to the property of that elder or dependent adult, is required to be punished by imprisonment in the county jail, or in the state prison for 2, 3, or 4 years when the money, labor, or real or personal property taken is of a value exceeding \$400, and by a fine not exceeding \$1,000 or by imprisonment in the county jail, or both, when the money, labor, or real or personal property taken is of a value not exceeding \$400.

This bill would impose the same punishment on any person who is not a caretaker who commits theft or embezzlement with respect to the property of an elder or dependent adult, if the person knows or reasonably should know that the victim is an elder or dependant adult. Because this bill would expand the scope of an existing crime by making the crime applicable to a broader category of persons, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 368 of the Penal Code is amended to read:

368. (a) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be

placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term of three years in the state prison, except that if the victim is 70 years of age or older the additional term shall be five years.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term of five years in the state prison, except that if the victim is 70 years of age or older the additional term shall be seven years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400); and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

(e) As used in this section, “elder” means any person who is 65 years of age or older.

(f) As used in this section, “dependent adult” means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. “Dependent adult” includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) As used in this section, “caretaker” means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(h) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (a) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (a) for any single offense.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

